Supreme Court.

ABSUMENT OF EX-CHIEF JUSTICE JONES ON BEHALE

Before Judges Edwards, Morris and Strong.

FRE. 23.—John Milhau and others vs. Jacob Sharp 

in the streets of the city of New York, resides in them and those for whom they prosecute: that through their industrate—and parthags they ellin say by their donastion of the to the public—it rests with them alone resis the power to do any act whatever in respect to this street that is not simply and purely an act of this street that is not simply and purely an act of the street that is not simply and purely an act of the street that is not simply and purely an act of the street in the streets of the city of New York, and that any act beyond that is a trespass; and if any destand the counsel upon the other side correctly, they have a cover the second that is a trespass; and if any destand the citizens in the city of New York and all travelers desiring to use them; and in that proposition, properly put and properly understood. I accord, for I make no pretence of claim to an interact should any streets on the part to sell or in any way dispose of them, or allow them to other than the legisless of them, or allow them to other than the legisless of them, or allow them to other than the legisless of them, or allow them to other than the legisless of them, or allow them to other than the legisless of them, or allow them to other than the legisless of them, or allow them to other than the legisless of them, or allow them to other than the legisless of them, or allow the properly of the streets of the city and that, as respects this particular railroad, if they had be power of legislation at all it is not the result of legislation cutered into by the corporation of the city to Jacob Sharp and others, for the transfer from the corporation of the city to Jacob Sharp and others, for the transfer from the corporation of the city to Jacob Sharp and others, for the transfer from the corporation of the city to Jacob Sharp of the properly to the corporation in the list of the properly to the corporation of the legisless of the city of the corporation of the legisless of the city of the corporation of the legisless of the city

sideration, but as a cublic trust, for the use of the citizens at large, and travellers upon the public streets. It is important, as the Court will readily see, that this legal estate should reside in the corporation of the city as trustees for this purpose, for a variety of reasons; and without such a seizing on the part of thell public, most manifest evils, and perpetual difficulties and disputes would occur, in regard to the occupation of the streets, the obstructions in them, and the trespasses upon them.

Ex-Chief Justice Bronson—Does this vest the soil?

Ex-Chief Justice Jones—I have stated it, sir, so strongly that it is impossible for the Court to have misunderstood me. We claim the legal estate in the city, as trustees, for the common benefit of the city, to use hose streets as public streets. That is what we claim, and not that we have a right to dispose of them as we please. Now, what is the proposition upon this particular point upon the other side? Their compiaint sets out with the allegation that this is an ancient city, and that the streets, as I understand it, were used, laid down, and so forth, by the owners of the ground over which they pass, and that the city carries its origin up to some 150 years. I believe; but I think some addition might have been made, that it goes beyond that, for it was formed, probably, about the year 1614 or 1615, according to the history given of it by those who have attended to the subject. Then the position is, that Broadway was originally opened and laid out by the owners of property for their own convenience and accommodation, and that they have suffered it to be used by others until it has become a property, or by what has been in modern times called by a name that has come into very familiar use, namely, "dedication." Well, sir, as regards this portion of the street that was opened at this time, is this position, in any respect, true? Of course, if the Court please, actual proof of the mode and manner in which Broadway was constructed, formed and opened, at th city lying south of Wall street, and which took its name, probably, from an outer wall of the city pass-ing trough it, through the church grounds, probably from river to river—for, indeed, at that time the em-bankment upon the North river at that spot was such that it only required to go the length of the churchyard to come to the river itself, or at least the embankment of it, for the west wall of the present churchyard was the margin of the North river, be-low which was only a sand back, the whole of the churchyard was the margin of the North river, below which was only a sand beach—the whole of that part of the city, and I speak from the history of the times, was almost exclusively, or at least to a very great degree, settled by the Dutch, anterior to the conquest by the English. It is perfectly well known that the Dutch, by their system of civil laws, to which we have referred the Court, held that the legal title of the public streets resided in the public—in the government—and it was probably so understood by Governor Dongan when he granted this charter. It will be remembered that by the first transfer, whether by conquest or otherwise—we do not like, in our day, to admit that the colony, even though it were a Dutch colony, was actually conquered—the sovereignty passed in some way from the Dutch government to the them Duke of York, who had, under the royal grants of his brother Charles, obtained royal patents for the whole of what is now the States of New Jersey and New York.

Judge Strong—At that time how far was Broad, way laid out?

Ex-Chief Justice Jones—As for as we con-

way laid out?

Ex-Chief Justice Jones—As far as we can ascer tain, sir, it then extended to what is now called Wall street; that is to say, the city extended no fur-ther, and it was but partially settled even to that Judge Strong-There was no regular laying out

Judge Strong—There was no regular laying out, then, before that time?

Ex-Chief Justice Jones—There is no actual record of laying out, so far as we have discovered. There is no actual record now existing, showing the precise mode and manner in which the street was continued from Wall street up to what is now the Hospital grounds, but beyond that we have ample records.

Judge Strong—Is there any record of any road to the upper part of the city?

Ex-Chief Justice Jones—No, sir; but all the maps would seem to indicate that there was a road of some kind extending from about Wall street to the Fields, which was not a very long distance, and probably it was owing to the reason that the old Dutch settlers at that time, according to the history of the day, had

their finche pastured in the public grounds. These were all public grounds at that time, and have ever since remainedso, and of course there would be roads of some kind from the lower part of the city to these gasting accounds. Probably that was been a public highway from that place, at least to the public prounds, senden their grant active of commentation and the public highway in the public highway and the public highway in the country to the city of New York until the Revol tions, not until shortly afterwards. Well, then, if the Court please, at the superior of the stand. That was the only ingress from the country to the city of New York until the medical and was not continued until somewhere about the levolution, and, according to mention the public—that they were the owners of it to the middle of the street. They state expressly their ownership in fee of the lands frouting upon the street; but when they comply speak of their "belief," and they show upon what that belief is founded, both in their complaint as I understand it, and certainly in their argument, but the public highway is carried to the middle of the street. But how far that does has a foundation upon the first high a public highway is carried to the middle of the street. But how far that does has a foundation upon the high the public highway is carried to the middle of the street. But how far that does has a foundation upon the defendant, in the first place they appeal to the chairs of hought and the street of hought

of course, not always presiding. But it was the Common Council. There was nothing like the distinctine don that you find in some of the private corporations, of two or three distinct heads, or organs, the destruction of one of which would destroy the whole body. This does not enter into the charter at all; and the death of the Mayor would no more terminate it than the death of any one of the Aldermen. It is given to this Common Council, and their successors for the time being, or the major part of them. At that time there existed in this city seven wards only; consequently the Common Council, when they assembled, consisted of fourteen persons, and the Mayor; and if, therefore, the eight Aldermen and Assistant Aldermen—because there was no distinction between them—concurred in any measure, let the Mayor sopinion be what it would, that measure was adopted and became a by-law, or a resolution, or an ordinance, whatever it purported to be, it was given to them to "Have, and from time to time, and at all times hereafter, forever, full power, license and authority, not only to establish, appoint, order, and direct, the making and laying out of all other streets, lanes, alleys, highways, water courses and

and authority, not only to establish, appoint, order, and direct, the making and laying out of all other streets, lanes, alleys, highways, water courses and bridges, not already made or laid out, but also the altering, mending and repairing of all such streets, lanes, alleys, highways, water courses and bridges heretofore made or laid out, or hereafter to be made or laid out, in and throughout the said city of New York, and the island of Manhattan, in such manner as the said Commen Council for the time being, or the major part of them, shall faink or judge to be necessary and convenient for all inhabitants and travellers there." This is a full confirmation of the previous grant, and a reiteration of it granting to the Common Council of the city of New York, or the major part of them. Now, if the Court please. I say that these grants, in my view of them, conferred upon the Common Council of the city of New York the power to lay out these streets and roads as they should judge fit and convenient, and when they were laid out, vested the legal title in them—the corporation. Now, the question as to their right to enter upon payate lands, and take those lands from an individual, and convert them into streets without making compensation, that forms a distinct branch of the inquiry; and I think if the Court will examine the documents before them which Mr. Hoffman, with se much care and attention, has collected and put in form, for the use of this Court, they will see that that question was agitated over and over again in the colonial government, and that there were acts passed and measures constantly taken to extinguish

those private rights for passage over the grounds which were converted into streets and that an act existed, which he refers to, under which the right of soil for the purpose of streets could be obtained upon making proper compensation; and he gives various instances, by which it appears, from the records now existing of those times, where application was made for, and compensation given to, individuals for those purposes. Supposing, therefore, the grounds to make the streets to be acquired by the corporation, and the streets established, either by cessions of the individuals, or by purchase, or, if you please, by the operation of a "dedication," that is, the owner of the property forming the street, and opening it in any of these ways, it seems to me that the title to the property necessarily vested in the corporation of the city—the legal estate—for all the purposes of the trust for which this street was opened and created. What is the meaning, and what is the legal sense, of a power to "order, establish, and direct?" My associate counsel has referred to the constitution of the United States for an explanation of the term "establish," and for an explanation of the term "resulate," which is equivalent to order and appoint—in both cases it being interpreted to mean, that the whole subject, the whole power over it, and the right and interest in it, is vested in the body who has this power. To be sure, a paramount law steps in there, according to our modern conceptions of the very highest obligations, and no doubt respected in that day, that private property could not be taken without compensation to the parties injured; and hence we are to conclude and infer, that wherever streets were laid out, and placed thus under the control and in the power of the corporation, that that previous condition was complied with, and that all those streets, wherever compensation was required, and wherever the owners did not voluntarily and gratitously concede the ground necessary for the street to the public, that they received a and punished, by actions in the name of the Corporation, or departments to which that particular subject was referred; and upon the same idea that these streets were vested in the public the act of '93 of the State was passed, conferring upon the Corporation all the right that the State might have as being the great public, in any part of the streets of the city of New York; and when the public—the Legislature—came to devise a system for laying out all that part of the city into streets and avenues which then only existed in fields, the same policy was pursued; and a system was established in the first place for the laying out of the streets, and that was accomplished under the act of 1807; and subsequently to that act the general law establishing the mode and system for opening the streets thus established by the previous act, and in both those acts, having distinctly in view the placing of streets, thus to be formed and laid out in the corporation, the owners were to be paid for the land taken to form those streets, themselves contributing, however, their just proportion by means of assessment. And that, sir, I think, puts an entire end to all questions about the title to the streets in all that part of Broadway which lies to the north, I think, of Fourth street. The whole of Broadway, to the north of Fourth street, with the exception of that part of it between Fourth and, I think, about Eighth street, formerly Arch street, has been opened by the system to which I have referred, and the title of course vested in the corporation. All of Broadway that has been opened beyond Arch street, between the present Eighth and Fourth streets, must have been opened under the new arrangement. Between Fourth and Eighth streets, Broadway has existed as an open street, the ground through which it then ran having been seized to the then owners, I believe, without the least doubt, to the corporation. All of Broadway that has been opened beyond Arch street, between the lighth streets, Broadway has existed as an open street, the resus, and, in many instances, the Court will find, if they think it necessary, by looking at the records of the city, the applications of neighborhoods to the Common Council to establish a pump at such a place of their convenience, directly in the street, and generally near the side walk, but in point of fact upon a portion of what was then the curb way. The pump in front of the old City Hall, it will be remembered, was famous for its fine water, and stood there for a long series of years, even after the Manhattan Company undertook to supply this city with pure and wholesome water. Not only did the corporation do this, but for the use of the fire department they erected engine houses, built upon the very streets, for the accommodation of the engines used in extinguishing fires. To be sure, they placed them in such postitions in those streets that they did not intrifere with the public traveller. They did not place them in the centre or in an inconvenient place, but still they were within the bounds of the aftered sand the streets were used for that purpose. Again, the system of vaults for the use of private houses had its origin even in those days, though not to the same extent that has since come into use, and every one of those vaults, according to the doctrine upon the other side, would be an eneroachment upon the private property of the individual; and in every instance in which an individual applied for a vault, he applied to a power that had no right to license it, and he himself would have had full power to have gone and undermined the street and created a vault on his own account. It is said that he could not break the pavement, because the public have the use of the street, but the owner, if he were the owner of the street, but the owner, if he were the owner of the street, but do will prove the sum of the street of the st

es in some degree, under those ideas, on what otherwise would be part of the public street. But in modern times this use has been continued. Now the pipes are laid under the surface of your streets in all directions; one system for distributing water, and the other for distributing gas, and one of these is laid by the public itself, and the other by companies organized for the purpose, and acting under license from the corporation. So, too, what is more common than for every building that comes up to make application to the corporation for permission to use a certain portion of the street during the time that the building is in course of erection; and this is uniformly granted, by license from the Common Council, to those who apply for it. Was it ever heard of that individual citizens had the right, under the circumstances, to institute suits for what a tever near of that mixed mixed and these necessary operations upon the public streets? So, again under the late system of mixed communication its poles sary operations upon the telegraph place by place, you have the telegraph place by place, you have the telegraph place by place, you have the telegraph in the streets. By whose authority do they stand there? By that of the corporation. Can any individual, opposite to whose door one of these telegraph poles should be placed by the authority of the Common Council, order it to be cut down because it is a thing not within the scope of the uses to which the streets were to be applied? Under the idea of mixance, if any of these things become a mixance, then the citizer has bis remedy, either by his private suit or by an interposition of the public authority through the Attorney General. But the Court will find if they will examine this question of nuisance that the books hold that the public streets or public highways are used by the public authorities for such purposes at these, and in some cases by private individuals, and lifther is no such obstruction of the regular and legitimate use of the street as amounts to a nuisance, they cannot be invaded by a private individual. Now it seems to me, that under these views of the subject its impossible to resist the conclusion, that in some of the views indicated by Mr. Hoffman, in his affidiavit before this Court, and who has given untring attention to the subject, and who has given untring attention to the subject, and who has given untring attention to the city of New York, as trustees for the public of the streets of the city, and that upon nother theory can we sustain the corporation in the proces, for nearly concernments, and the provided the company of the result of the city of New York in the original of the whole legal that of the provided the corporation in the power, given them by the charter, to direct order, and control these streets, exclusive of any other power? In addition to the power growth hold the ter itself—from the broad and expansive power—to order and direct the use and management of these streets, and to do with them what the public interest, in their judgment, may require. They cannot divert them from the purpose for which they were intended. They cannot self them to individuals in fee simple. They cannot erect dwelling houses upon them, from which they are to derive rent; but they can order and direct them for any purpose, or any use which shall tend to the benefit and advantage of the city, which is not incompatible to the use of them for the travelling and common purposes of the citizens. These are the powers they possess—these are the powers we contend for, and those are the only powers which the Common Council attempt to exercise here. Chancellor Kent goes on to say—

The statute laws are not intended to alter or control (except in the given cases) the charter on the points, but the object is generally to give additional specific and subsiduary relief, and the corporation have frequently applied for legislative authority, and have preferred to exercise the power under that sanction, though the general terms of the charter gave it to them.

And further he says—

The statute powers have become so ample, so various, and so full of direction, that the charter power seems to be in a great measure absorbed and lost in the new statute powers; but whenever and wherever the statute provisions do not supply precise and adequate authority in the given instance, the Common Council can always resort to the never failing powers under the charter, which gives broad and large authority commensurate to every case.

These, if the Court please, constitute the authority

which gives broad and large authority commensurate to every case.

These, if the Court please, constitute the authorities under which this Common Council has acted in giving the license that this resolution purports to give—a permission to this company, to Jacob Sharp and others, to lay these rails in Broadway. Has not, if the Court please, the exercise of these powers been recognized and sanctioned by the courts of justice of the State, and by this very Court, in many instances? What has this resolution done? We will refer to the resolution itself, which is annexed to the combaint: blaint:-- Resolved, That Jacob Sharp and others, and those who

Resolved, That Jacob Sharp and others, and those who may for the time being be associated with them, all of whom are herein designated as associates of the Broadway Railway, have the authority and coment of the Common Council to lay a double track for a railway in Broadway and Whitehall or State street, from the South ferry to Fifty ninth street; and also, hereafter, to continue the same, from time to time, along the Bloomingdale road to Manhattanville, which continuation they shall be required, from time to time, to make whenever directed by the Common Council, the said grant of permission and authority being upon and with the following conditions and stipulations.

And then follow the stipulations. The grant then, if the Count please, is in substance, and effect nothing

the Court please, is in substance and effect nothing more than the consent of the corporation to these persons to lay that double track of rails in Broadpersons to lay that double track of rails in Broadway between the points designated. It is in its very
terms, and in its nature, a license merely. And it is
a license for what? It is a license to them to lay a
railroad in a public street for the purpose of enabling
the cars to pass along upon that railroad, for the
carriage of passengers between one part of the city
and another. Now what, then, is this license or privilege? Why, if the Court please, as I view it, it is
a legislative local act of the city of New York,
authorizing the use of carriages for the carriage of
passengers, usually termed and denominated cars, in
the same way that that street is used, or was before
used, and still continues to be used, for the carriage
of passengers in carriages or omnibuses.

Judge Strong—Can it be revoked after laying
down the rails?

[TO BE CONTINUED.]

Theatrical and Musical.

BOWERY THEATRE.—This establishment is progressing every week, under the abic management of Messrs. Waldron and Stevens, who are so well and favorably known to the dramatic public. The selections for this evening are the operatic drama of the "Bohemian Girl," which will be followed by "Timour, the Tartar." The receipts of the evening are for the benefit of Mr. Derr, whose equestrian feats in "Putnam," and other pieces, have always been witnessed with surprise, followed by enthusiastic cheers.

BROADWAY THEATRE, Mr. Forrest, the distin-BROADWAY THEATRE—Mr. Forrest, the distinguished American tragedian, who may be said to have now the American stage to himself, so far as tragic performances are concerned, will appear tonight in his great character of Rolla, Mr. Conway as Pizarro, Mr. Pope as Alonzo, Madame Ponisi as Cora, and Mrs. Abbott as Elvira. The entertainments to conclude with the "Two Bonnycastles."

Niblo's Garden.—The distinguished vocalist, Madame Hegrietta Sontag, whose vocal abilities are

so much admired by all the musical deletanti of this city, will appear to-night in the beautiful opera of "Linda di Chamounix," assisted by the best talent. It is unnecessary to say those who visit Niblo's to-night will receive a rich musical treat, and will be compelled, as they have been during her engagement, to give warm expressions of their admiration of superior talent.

BURTON'S THEATHER. The manager of this means

BURTON'S THEATRE.—The manager of this prosperous theatre announces, as usual, a bill of entertainment which cannot fail to crowd the house. The favorite piece of "Paris and London," so much admired as a splendid comedy, but more so as regards the artists who properly delineate the respective characters of the piece, will be the first feature, which will be followed by two pieces of very attractive features.

NATIONAL Transport

NATIONAL THEATRE.—Purdy, the active and energetic manager of this establishment, announces an entertainment which cannot fail to draw a large audience. The light and pleasing selections of dramatic performances which are every night given by the manager, are the sources from which his treasury receive substantial proofs of his successful catering. To-night the amusements consist of the "Six Degrees of Crime," and Clarke's successful drama of "O'Neil the Great."

the Great."

WALLACK'S THEATRE.—Where can one wile away an evening with more usmixed pleasure than within the precincts of this ably conducted Temple of Thespis? The selections are always of a character which cannot fail to please, and the artists engaged by Mr. Wallack are, to say the least of them, no way inferior to any in the Union. The fine comedy of "The Rivals" will commence the performances, and they will conclude with "First Come, First Served."

American Museum.—The successful new comic drama, styled the "Old Folks at Home," is to be repeated this evening, with the same excellent cast; and the laughable farces entitled the "Dancing Barber," and "One Thousand Milliners Wanted," will be given in the afternoon.

Circus.—A great array of attractions will be pre-

CIBCUS.—A great array of attractions will be pre-sented at the Amphitheatre to-night, including eques-trian and gymnastic feats, in which the full strength of the excellent troupe will appear. The whole will conclude with the spectacle of "St. George and the Dragon."

Dragon."

CHRISTY'S OPERA HOUSE.—Christy'S Minstrels continue uninterrupted in their career of success. They offer a highly attractive programme for this evening.

Wood'S MINSTRELS advertise a repetition of last night's bill, it having crowded the hall to overflowing. The lecture on "Woman's Rights," and the "Arab Brothers," are included."

'Arab Brothers," are included."

Banvard's Panorama of the Holy Land will be exhibited again this evening, at the Georama, Broadway.

Risley's Thames is attracting crowded assemblages at 406 Broadway.

Mme. Valentini will give another of her popular concerts to-night, at Hope Chapel, Broadway. A visit to the concert room will amply repay the votaries of music.

Robert Heller, the renowned magician, annonness another good programme for this evening.

Ball's Model of San Francisco has become quite a popular exhibition. Every one should see it.

Miss Kimberly, the celebrated actress, has arrived in town on her way to Richmond, to play an engagement, and is stopping at the St. Nicholas.

in town on her way to Richmond, to play an engagement, and is stopping at the St. Nicholas.

Coroners' Inquests.

The Burning Case in Fifty Nirth Street.—Coroner Hilton held an inquest, at the City Hospital, yesterday, upon the body of Charles McFeely, who died from dreadful burns which he received on Tuesday afternoon, in Fifty-ninth street, as reported in our paper. The circumstances connected with the unfortunate accident will be collected from the following testimony:—

Henry Hallmaughn sworn—I reside at No. 451 Washington street; I am foreman in the iron foundry of Rider & Ward, in Fifty-ninth street; I knew the decased, Chas. McFeely, he was employed as a labore in the same foundry; between the hours of one and two o'clock, on Tuesday last, we were casting an iron column for a sugarhouse; the deceased was employed in holding the rack chain of the crane which raises up the melted metal previous to its being deposited in the mould; we had poured in about seven hundred pounds of metal, when it choked the bottom of the core and prevented the air from escaping through it; the confined gas caused an explosion, which burst the metal through the flask and scattered it around; the hot metal was thrown over deceased, set his clothing on fire, and burned him about the head and chest; when his clothes were on fire, he ran from the shop into the yard, and received the meat of his burns in this way; his dress was burned completely off before any assistance could be rendered to him; he was immediately sent to the hospital.

Several witnesses, who were employed in the foundry, and were working close by the deceased at the time of the accident, corroborated this testimony. One of them, named Felix Larkin, had a very narrow escape, having been burned upon the face himself.

Surgeon Suckley deposed to the admission of the decased to the hospital.

Surgeon Suckley deposed to fire admission of the decased to the hospital, and as to the severe and extensive burns upon his body and extremities, which caused his death.

The jury

Reade street, upon the 6th inst. The lonowing testimony was taken:—
John T. Smith sworn—I am a policeman of the Flfth ward; about 5 o'clock on the morning of the 6th of this month I was on duty in Reade street; I heard a groaning in an alley way near Church street; I went there, and found the deceased in a sitting position, about twenty feet from its entrance; one of her legs was broken; there was a nile of hoards near to her, some of which appeared to found the deceased in a sitting position, about twenty feet from its entrance; one of her legs was broken; there was a pile of boards near to her, some of which appeared to have fallen down upon her; deceased appeared to me to be about 30 years of age; I asked her if "any person had been in there with her?" and she replied, "No;" I had her conveyed to the Hospital; she said that she had no friends in the city, but that she resided at No. 10 Roosevelt street.

Matilda Goodwin sworn—I am a nurse in the New York Hospital; deceased was taken into the ward I have charge of; when she came in she stated that a "rowdy" met her when passing through Duane street, and wanted her to go drink; that she would not go, and he dragged her into a wood yard; that in a struggle there the wood fell down and broke her leg; she was perfectly sober at the time; she said that the man then ran away, and that she called "Watch," when a watchman came; she also stated that before he came, she had got the wood off her leg, and made it worse by endeavoring to stand upon it; she would exclaim frequently during her illness, "Oh, the villain;" she did not give a clear account of why she was out at that time in the morning.

Susan Cooper deposed as to the admission of the deceased, the injury, amputation of the limb, and her deceased, the injury, amputation of the limb, and her deceased, the injury, amputation of the limb, and her deceased, the injury rendered a verilet of death from a fracture of the leg from the falling of a pile of lumber in Reade street, the effect of struggling to rid herself from the assault of a man to the jury unknown. The deceased was a bout thirty years of age, and a native of Ireland.

Sudawa Brann.—Coroner Wilhelm, held an inquest last evening, at the house No. 132 Orchard street, upon the body of Agnes Bowman, an old lady, who died there suddenly about noon. After hearing the testimony of her husband and the medical evidence of Doctor Uhi, the jury rendered a verdict of death from disease of the heart. The deceased

The Art Union Case.

The Art Union Case.

Another Opinion of the Court of Appeals.

The People against the American Art Union.

Ruggles, Chief Judge, delivered the opinion of the Court. By the 30th section of the act against radiing and lotteries, (1 R., sec. 666,) it is enacted, "That no person unauthorized by special law for that purpose, now existing, shall offer for sale, distribution, or disposition, in any way, any real estate, or any money, goods, chattels, articles, or things in action, or any interest therein, to be determined by lot or chance, that shall be dependent upon the drawing of any authorized or unauthorized lottery, within or out of this State," &c. By the 31st section: "All property so offered for sale, distribution, or disposition, against the provisions of law, shall be forfeited to the people of this State, as well before as after the determination of the chance on which the same was dependent." &c. This action was brought to recover, as forfeited, certain pictures and works of art. alleged to have been offered for distribution in violation of the 30th section, above in part recited. But that section is inapplicable to the present case. It applies only to distributions by lot or chance, dependent upon the drawing of some lottery over which the purpose of distribution have no control, and which drawing was not originally set on foot for the purpose of distribution have no control, and which drawing was not originally set on foot and controlled by the parties interested in the articles in question was originally set on foot and controlled by the parties interested in the articles proposed to be distribution by lot or chance. The offence, therefore, is not embraced within the 30th and 31st sections above mentioned. Those sections appear to thave been framed for the purpose of preventing an evasion of the 27th section, which forbids the drawing of sany lottery. If the defendants had made the distribution of the articles in question as prizes, to depend on the drawing of some other lottery in or out of the State,

FOREIGN CONSUL.—Henry George Kuper has been recognized by the President as Consul of Great Britain for the State of Maryland.

Wisconsin, with a sparse and emigrant population, has a school and university fund of \$850,000, and an annual outlay. for the instruction of her children, of \$120,000; 90,000 of her 120,000 children have attended school during the year.